



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGIONS 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590



April 26, 2006

REPLY TO THE ATTENTION OF:

Christopher A. Walker, esq
Van Kley & Walker, LLC
137 North Main Street, Suite 316
Dayton, Ohio 45402
tel. #(937)-226-9000

re: In the Matter of Dayton X-Ray Site, Joan Ruth Sammons, Respondent
U.S. EPA Region 5 CERCLA Docket No. V-W-'06-C-846
Transmittal of two copies of signed Agreement for Recovery of Past Response Costs

Dear Chris:

Enclosed please find two signed and executed copies of the above referenced Agreement—one for your files and one for your client. I will let you know when the notice of opportunity for the public to comment on the proposed settlement pursuant to Section XIV of the Agreement appears in the Federal Register, and will send you a letter as set forth in the Agreement Section XV, when the public comment period has closed. Thank you for facilitating resolution of this matter and reaching the proposed Agreement.

Sincerely,

A handwritten signature in cursive script that reads "Jerome P. Kujawa".

Jerome P. Kujawa
Associate Regional Counsel

Enclosure

bcc: Debbie Regel
Jan Pfundheller
Sheila Barnes

OSF
Region 5 Record Center ✓
SF Accounting MF-10J

**CERCLA SECTION 122(h)(1) AGREEMENT
FOR RECOVERY OF PAST RESPONSE COSTS**

IN THE MATTER OF:)	AGREEMENT FOR RECOVERY
)	OF PAST RESPONSE COSTS
Dayton X-Ray Site)	
Dayton, Ohio)	U.S. EPA Region 5
)	CERCLA Docket No. V-W- '06 -C-846
Joan Ruth Sammons)	
)	
SETTLING PARTY)	PROCEEDING UNDER SECTION
)	122(h)(1) OF CERCLA
_____)	42 U.S.C. § 9622(h)(1)

I. JURISDICTION

1. This Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("U.S. EPA ") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the U.S. EPA and redelegated to the Director, Superfund Division, U.S. EPA Region 5 by Delegation No. 14-14 D.

2. This Agreement is made and entered into by U.S. EPA and Joan Ruth Sammons ("Settling Party"). The Settling Party consents to and will not contest U.S. EPA's authority to enter into this Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Agreement concerns the Dayton X-Ray Site ("Site") located in Dayton, Montgomery County, Ohio. U.S. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9). U.S. EPA alleges that Joan Ruth Sammons is the "owner" or an "operator" of the facility at the time of a release or disposal of hazardous substances at the facility, as defined by Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A).

4. In response to the release or threatened release of hazardous substances at or from the Site, the U.S. EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

5. In performing response actions, U.S. EPA has incurred response costs at or in connection with the Site.

6. U.S. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for response costs incurred or to be incurred at or in connection with the Site.

7. U.S. EPA has determined that the total past and projected response costs of the United States at or in connection with the Site will not exceed \$500,000, excluding interest.

8. U.S. EPA and Settling Party recognize that this Agreement has been negotiated in good faith and that this Agreement is entered into without the admission or adjudication of any issue of fact or law.

III. PARTIES BOUND

9. This Agreement shall be binding upon U.S. EPA and upon Settling Party and her heirs, successors and assigns. Any change in ownership, including but not limited to, any transfer of assets or real or personal property of Settling Party, shall in no way alter Settling Party's responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

IV. DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "Agreement" shall mean this Agreement. In the event of conflict between this Agreement and any appendix, the Agreement shall control.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "U.S. EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

e. "Interest" shall mean interest at the rate specified for interest on investments of the U.S. EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest

shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

f. "Paragraph" shall mean a portion of this Agreement identified by an Arabic numeral or a lower case letter.

g. "Parties" shall mean U.S. EPA and Settling Party.

h. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that U.S. EPA and its contractors have incurred or U.S. EPA has paid at or in connection with the Site through the effective date of this Agreement, plus accrued Interest on all such costs through such date.

i. "Section" shall mean a portion of this Agreement identified by a Roman numeral.

j. "Settling Party" shall mean Joan Ruth Sammons.

k. "Site" shall mean the Dayton X-Ray Superfund site, encompassing approximately 2 acres, located at 1150 West Second Street in Dayton, Montgomery County, Ohio.

l. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. PAYMENT OF RESPONSE COSTS

11. Within thirty (30) days of the effective date of this Agreement, Settling Party shall pay to U.S. EPA twenty-thousand, nine hundred and fifty-five dollars and sixty-two cents (\$20,955.62), plus an additional sum of one hundred, seventy-eight dollars and ninety cents (\$178.90) for Interest on that amount calculated from January 21, 2005 through June 15, 2005, for a total payment to U.S. EPA by Settling Party of twenty-one thousand, one hundred and thirty-four dollars and fifty-two cents (\$21,134.52).

12. Payment by Settling Party shall be made by certified or cashier's check made payable to "U.S. EPA Hazardous Substance Superfund." The check shall identify the name and address of the Party making payment, the "Dayton X-Ray Site" by name, U.S. EPA Region 5, and Site/Spill ID Number #B5R9, and the U.S. EPA docket number _____ for this action. Settling Party shall send the check to:

U.S. EPA Superfund
Superfund Program Accounting and Analysis Section
P.O. Box 70753

Chicago, IL 60673

13. At the time of payment, Settling Party shall also send notice that payment has been made to U.S. EPA in accordance with Section XII (Notices and Submissions). Such notice shall reference the U.S. EPA Region 5 Site/Spill ID Number B5R9 and the U.S. EPA docket number _____ for this action.

14. The total amount to be paid by Settling Party pursuant to Paragraph 11 shall be deposited in the U.S. EPA Hazardous Substance Superfund.

VI. FAILURE TO COMPLY WITH AGREEMENT

15. Interest on Late Payments. If Settling Party fails to make any payment required by Paragraph 11 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

16. Stipulated Penalty.

a. If any amounts due to U.S. EPA under Paragraph 11 are not paid by the required date, Settling Party shall be in violation of this Agreement and shall pay to U.S. EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 15, two hundred and fifty dollars (\$250) per violation per day that such payment is late.

b. Stipulated penalties are due and payable within thirty (30) days of the date of demand for payment of the penalties by U.S. EPA. All payments to U.S. EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made payable to "U.S. EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the Party making payment, the "Dayton X-Ray Site" by name, U.S. EPA Region 5 and Site Spill ID Number B5R9, and the U.S. EPA Docket Number for this action. Settling Party shall send the check (and any accompanying letter) to:

U.S. EPA Superfund
Superfund Program Accounting and Analysis Section
P.O. Box 70753
Chicago, IL 60673

c. At the time of each payment, Settling Party shall also send notice that payment has been made to U.S. EPA in accordance with Section XII (Notices and Submissions). Such notice shall identify the U.S. EPA Region 5 and Site Spill ID Number B5R9, and the U.S. EPA Docket Number for this action.

d. Penalties shall accrue as provided in this Paragraph regardless of whether U.S. EPA has notified Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

17. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to U.S. EPA by virtue of Settling Parties' failure to comply with the requirements of this Agreement, if Settling Party fails or refuses to comply with the requirements of this Agreement, she shall be subject to an enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of U.S. EPA, brings an action to enforce this Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

18. Notwithstanding any other provision of this Section, U.S. EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement. Payment of stipulated penalties shall not excuse Settling Party from payment as required by Section V or from performance of any other requirements of this Agreement.

VII. COVENANT NOT TO SUE BY U.S. EPA

19. Except as specifically provided in Section VIII (Reservations of Rights by U.S. EPA), U.S. EPA covenants not to sue or take administrative action against Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant shall take effect upon receipt by U.S. EPA of all amounts required by Section V (Payment of Response Costs) and any amounts due under Section VI (Failure to Comply with Agreement). This covenant not to sue is conditioned upon the satisfactory performance by Settling Party of her obligations under this Agreement. This covenant not to sue extends only to Settling Party and does not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY U.S. EPA

20. U.S. EPA reserves, and this Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within the Covenant Not to Sue by U.S. EPA in Paragraph 19. Notwithstanding any other provision of this Agreement, U.S. EPA reserves all rights against Settling Party with respect to:

- a. liability for failure of Settling Party to meet a requirement of this Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within

the definition of Past Response Costs;

c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;

d. criminal liability; and

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

21. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Agreement.

IX. COVENANT NOT TO SUE BY SETTLING PARTIES

22. Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the U.S. EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State Ohio, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

23. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

24. Settling Party agrees not to assert any claims and to waive all claims or causes of action that she may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Party with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of

material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

25. The waiver in Paragraph 24 shall not apply with respect to any defense, claim, or cause of action that Settling Party may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against Settling Party. The waiver also shall not apply to any claim or cause of action against any person meeting the above-mentioned criteria if U.S. EPA determines:

a. that such person has failed to comply with any U.S. EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e) or Section 3007 of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or "RCRA"), 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

26. Except as provided in Paragraphs 24 and 25, nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. The Parties expressly reserve any and all rights, defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

27. U.S. EPA and Settling Party agree that the actions undertaken by Settling Party in accordance with this Agreement do not constitute an admission of any liability by Settling Party. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in Section II of this Agreement.

28. The Parties agree that Settling Party is entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are Past Response Costs.

29. Settling Party agrees that with respect to any suit or claim for contribution brought by her for matters related to this Agreement, she will notify U.S. EPA in writing no later than sixty (60) days

prior to the initiation of such suit or claim. Settling Party also agrees that, with respect to any suit or claim for contribution brought against her for matters related to this Agreement, she will notify U.S. EPA in writing within ten (10) days of service of the complaint or claim upon her. In addition, Settling Party shall notify U.S. EPA within ten (10) days of service or receipt of any Motion for Summary Judgment and within ten (10) days of receipt of any order from a court setting a case for trial, for matters related to this Agreement.

30. In any subsequent administrative or judicial proceeding initiated by U.S. EPA, or by the United States on behalf of U.S. EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by U.S. EPA set forth in Section VII.

XI. RETENTION OF RECORDS

31. Until three (3) years after the effective date of this Agreement, Settling Party shall preserve and retain all records, reports, or information (hereinafter referred to as "records") now in her possession or control, or which come into her possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

32. After the conclusion of the three (3) year document retention period in the preceding paragraph, Settling Party shall notify U.S. EPA at least ninety (90) days prior to the destruction of any such records and, upon request by U.S. EPA, Settling Party shall deliver any such records to U.S. EPA. Settling Party may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege, she shall provide U.S. EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to U.S. EPA in redacted form to mask the privileged information only. Settling Party shall retain all records that she claims to be privileged until U.S. EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the U.S. EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

33. Settling Party hereby certifies that, to the best of her knowledge and belief, after thorough inquiry, she has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to her potential liability regarding the Site since notification of potential

liability by the United States or the State or the filing of suit against her regarding the Site.

XII. NOTICES AND SUBMISSIONS

34. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to U.S. EPA and Settling Party.

As to U.S. EPA :

Debbie Regel
U.S. EPA Office of Superfund
77 West Jackson Boulevard
Chicago, IL 60604

Jerome Kujawa, esq.
U.S. EPA ORC (C-14J)
77 West Jackson Boulevard
Chicago, IL 60604

U.S. EPA Region 5 Comptroller's Office
77 West Jackson Boulevard
Chicago, IL 60604

As to Settling Party, in care of her attorney:

Joan Ruth Sammons
c/o Christopher Walker, esq.
137 North Main Street, Suite 316
Dayton, Ohio 45402

XIII. INTEGRATION

35. This Agreement constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement.

XIV. PUBLIC COMMENT

36. This Agreement shall be subject to a public comment period of thirty (30) days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, U.S. EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper, or inadequate.

XV. EFFECTIVE DATE

37. The effective date of this Agreement shall be the date upon which U.S. EPA issues written notice that the public comment period pursuant to Paragraph 36 has closed and that comments received, if any, do not require modification of or U.S. EPA withdrawal from this Agreement.

IT IS SO AGREED:

U.S. Environmental Protection Agency

By: Richard C Karl

4-25-06

Richard C. Karl
Director, Superfund Division
U.S. EPA, Region 5, Chicago IL

Date

THE UNDERSIGNED SETTLING Party enters into this Agreement in the matter of Dayton X-Ray Site, Region 5 Site ID Number B5R9 U.S. EPA docket number relating to the Dayton X-Ray Site in Dayton, Ohio:

FOR SETTLING Party Joan Ruth Sammons

By: Joan Ruth Sammons

Joan Ruth Sammons

June 28, 2005

Date